

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-23-608 | Amend |
| R4-23-611 | Amend |
| R4-23-612 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. § 32-1904(A)(1) and (2)
Implementing statutes: A.R.S. §§ 32-1904(B)(3) and (5) and 32-1932(D)(4)
- 3. The effective date of the rules:**
September 11, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 978, February 23, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 1524, April 13, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, Ext. 131
Fax: (623) 934-0583
E-mail: rxcop@qwest.net
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Board's five-year rule review in September 1997 identified R4-23-611 and R4-23-612 for amendment. The changes will increase the clarity, conciseness, continuity, and understandability of the rule. Other changes are necessary based on contemporary practice standards and new technology in pharmacy equipment. Because of recent format and style changes to other Sections of Article 6, R4 23- 608 will be updated to improve clarity. The amended rule will include format, style, and grammar changes necessary to comply with the current Administrative Procedure Act.
The Board believes that making these rules will benefit the public health and safety by establishing standards for pharmacy facilities and equipment.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
Not applicable
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

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9. The summary of the economic, small business, and consumer impact:

The cost to the Board of Pharmacy and the Secretary of State for writing and publishing the rule will be minimal. The proposed rule will have little economic impact on pharmacies. The rule clarifies and updates existing language that relates to the facilities of a pharmacy, the supply of drugs and chemicals, and minimum pharmacy equipment standards. The rule clarifies the intent of an April 1, 1995 rule change that required toilet facilities either within the pharmacy area or no further than 50 feet from the pharmacy area. Since implementing this 1995 rule change, there have been instances where a toilet was physically within 50 feet of the pharmacy area, but the actual walk to the toilet was more than 50 feet. The proposed rule will require toilet facilities either within the pharmacy area or no further than a walking distance of 50 feet from the pharmacy area. This change could have a minimal economic impact on some pharmacies. The majority of pharmacies will see no economic impact by the proposed rule. The proposed rule will have no economic impact on the public. The Board, pharmacies, and the public benefit from a rule that establishes standards for pharmacy facilities, the supply of drugs and chemicals, and pharmacy equipment in Arizona.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

At the request of GRRC staff, the Board made minor grammar, style, format, and punctuation changes. A typographical error was discovered by Board staff in R4-23-612(11). The proposed rule language is: "if C-II, C-IV, and C-V" but should be, "if C-III, C-IV, and C-V". The final rule contains the change from C-II to C-III. The Board changed R4-23-612(8) by adding the words "A current hard-copy or access to a current electronic-copy of the".

11. A summary of the principal comments and the agency response to them:

There was one written comment received from the Arizona Pharmacy Association. The comment was in support of the rule as written.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously approved as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

- R4-23-608. Change of Personnel and Responsibility
- R4-23-611. ~~Sanitation~~ Quality Pharmacy Facilities
- R4-23-612. Equipment

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-608. Change of Personnel and Responsibility

- A. ~~The owner or management of a~~ A community, hospital, or limited-service pharmacy permittee shall ~~notify~~ give the Board:
 - 1. ~~of a change of pharmacists~~ Notice by mail, facsimile, or electronic mail within ten days of employing or terminating a pharmacist; and
 - 2. ~~shall notify the Board of a change of the pharmacist in charge within 24 hours~~ Immediate notice of designating or terminating a pharmacist-in-charge.
- B. Responsibility of ownership and management: ~~The owner and management of a pharmacy are~~ shall:
 - 1. ~~Responsible for the acts of the~~ Ensure that pharmacists, interns, ~~and other pharmacy employees similar to the laws pertaining to agents. An owner or manager is obligated to impress upon his employees that the~~ comply with state and federal laws must be observed; but and administrative rules; and
 - 2. ~~he shall~~ Not overrule the pharmacist in charge a pharmacist in matters upon questions of pharmacy ethics and interpretations of the interpreting laws pertaining to the practice of pharmacy and or the distribution of drugs and devices.
- C. ~~Unprofessional conduct or conduct contrary to the public's interest by personnel of a pharmacy shall be cause for the suspension or revocation of the~~ The Board may suspend or revoke a pharmacy permit if the owner or management of a pharmacy violates subsection (B).

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R4-23-611. ~~Sanitation~~ Quality Pharmacy Facilities

- A.** ~~Sanitary facilities must comply with laws: All sanitary Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:~~
- ~~1. A pharmacy's facilities shall be~~ are constructed in accordance with the ~~according to state and local laws and ordinances; applying thereto.~~
 - B.** ~~2. The A pharmacy facility's:~~
 - ~~a. Walls, ceilings, windows, floors, shelves, and equipment shall be kept~~ are clean and in good repair and order;
~~and~~
 - ~~b. The Counters, shelves, aisles, and open spaces shall be~~ are not be cluttered;
 - C.** ~~3. Trash: Adequate trash receptacles shall be~~ are provided. no waste material shall be permitted to collect in the pharmacy area. and emptied periodically during the day;
 - D.** ~~4. Toilet: A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after April 1, 1995 shall provide October 1, 2001 provides toilet facilities either:~~
 - ~~a. Within~~ Within the pharmacy area, or
 - ~~b. No No further than a walking distance of 50 feet from the pharmacy area;~~
 - ~~5. The toilet shall be facilities are maintained in a sanitary condition and in good repair at all times;~~
 - E.** ~~6. Personnel's apparel: All professional personnel and staff of the pharmacy shall be required to keep themselves and their apparel neat and clean while in the pharmacy area;~~
 - F.** ~~7. Animals: No animals, except man, guide dogs for the blind and guard dogs, shall be~~ are allowed in the pharmacy;
~~other than guide dogs for the blind and guard dogs.~~
 - G.** ~~8. Insects and rodents: The pharmacy facility shall be~~ is kept free of insects and rodents; and
 - H.** ~~9. Hot and cold running water: There shall be is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for pharmaceutical purposes only. A sink in the lavatory shall not be considered satisfactory. use in preparing drug products.~~
- I.B.** ~~Supply of drugs and chemicals: A pharmacy permittee or pharmacist-in-charge shall ensure that:~~
- ~~1. Reasonable supply required: A pharmacy shall have maintains a stock of pharmaceuticals drugs and chemicals that:~~
 - ~~a. Are sufficient to reasonably meet the normal demands of the trading area or patient base the pharmacy serves;~~
~~and~~
 - ~~b. Such drugs and chemicals shall Meet all standards of strength and purity as established by the official compendiums;~~
 - ~~2. Must be free of contamination: All stock, and materials, drugs, and chemicals held for ultimate sale or supply to the consumer shall be free of contamination. are not contaminated;~~
 - ~~3. Expiration date: All stock and material which has exceeded its expiration date shall be removed from stock and returned to the source of supply or destroyed. Policies and procedures are developed and implemented to prevent the sale or use of a drug or chemical:~~
 - ~~4. a. That exceeds its expiration date;~~
 - ~~b. Deteriorated stock: All stock and material that appears and can be presumed to have That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor, precipitation, or other change that can be as determined by organoleptic examination or by other means; shall be removed from stock and returned to the source of supply or destroyed.~~
 - ~~5. c. Improper labels: All stock and materials That are is improperly labeled; shall be removed from stock and returned to the source of supply or destroyed.~~
 - ~~6. d. Defective container: All stock and material the Whose container of which is defective; or shall be removed from stock and returned to the source of supply or destroyed.~~
 - ~~e. That does not comply with federal law; and~~
 - ~~4. The policies and procedures described in subsection (B)(3):~~
 - ~~a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and~~
 - ~~b. Provide the following:~~
 - ~~i. Any expiration-dated drug or chemical is reviewed regularly;~~
 - ~~ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and~~
 - ~~iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.~~

R4-23-612. Equipment

~~In every pharmacy there shall be available the necessary equipment for the practices to be performed~~ A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

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1. Adequate refrigeration ~~storage~~ equipment for operation of the ~~pharmacy~~. dedicated to the storage of drugs and biologicals;
2. ~~Equipment to produce a typed or mechanically printed label.~~
3. ~~Equipment to produce mechanically printed numbers.~~
4. ~~Poison register wherever poisons are sold.~~
- 5-2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;:
- 6-3. Graduates in assorted sizes;:
- 7-4. One mortar and pestle;:
- 8-5. Spatulas of assorted sizes including one nonmetallic;:
- 9-6. Prescription balance, Class A, ~~and with weights~~ or an electronic balance of equal or greater accuracy;
- 10-7. One ointment tile or equivalent;:
- 11-8. ~~A current hard-copy or access to a current electronic-copy of the Arizona Pharmacy Act and regulations~~ administrative rules and Arizona Controlled Substance Act;
- 12-9. A professional reference library consisting of a minimum of ~~4~~ one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
 - a. Pharmacology or toxicology,
 - b. Therapeutics,
 - c. Drug compatibility, and
 - d. Drug product equivalency;:
- 13-10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;:
- 14-11. A ~~"C"~~ red C stamp as ~~required by the federal Act for controlled substances, if using other than the three file systems.~~ defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
- 15-12. Current antidote and drug interaction information;: and
- 16-13. Regional poison control phone number prominently displayed in the pharmacy area.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

PREAMBLE

1. **Sections Affected**

R4-39-601	<u>Rulemaking Action</u>
R4-39-602	Amend
R4-39-603	Amend
	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 32-3003(A)(3), 32-3073(A)(6), and 32-3027(B)
Implementing statute: A.R.S. §§ 32-3058, 32-3071, 32-3072, 32-3073, 32-3074, and 32-3075
3. **The effective date for the rules:**

September 12, 2001
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 4448, November 24, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 1707, April 27, 2001
5. **The name and address of agency personnel with whom persons may communication regarding the rulemaking:**

Name:	Teri Candelaria, Executive Director
Address:	Board for Private Postsecondary Education 1400 W. Washington, Room 260 Phoenix, AZ 85007
Telephone:	(602) 542-5709

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Fax: (602) 542-1253

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rulemaking is to make the rules more clear, concise, and understandable and to be consistent with required rule-making language and style.

R4-39-601: The rule revision regarding the Submission of Assessments will ensure consistency with statutory changes and to conform the rules to current Board policy and procedures.

R4-39-602: The rule revision regarding Claims against the Student Tuition Recovery Fund is to conform the rule to current Board policy and procedures.

R4-39-603: The new rule is to conform to current Board policy and procedures in processing student record requests and to establish a prescribed fee for student record requests.

7. Reference to any study that the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The preliminary summary of the economic, small business, and consumer impact statement:

Current licensees of the Board will bear the cost of assessments to meet the "cap" of the Student Tuition Recovery Fund. A person requesting his or her records will bear the cost of the student record request charge. The student records request fee will defer some of the storage and retrieval costs charged by the Arizona Department of Library, Archives and Public Records, Records Management Center.

The rulemaking will make the rules more clear, concise, and understandable. The Board and the institutions subject to licensure by the Board will benefit from the increase clarity.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

Technical and grammatical changes have been made between the proposed rules and the final rules.

11. A summary of the principal comments and the agency response to them:

The Board did not receive any written comments.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Whether the rule was previously adopted as an emergency rule, and if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:

Not applicable

15. The text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

ARTICLE 6. STUDENT TUITION RECOVERY FUND

Section

R4-39-601. Submission of Assessments

R4-39-602. Claims

R4-39-603. Student Records

ARTICLE 6. STUDENT TUITION RECOVERY FUND

R4-39-601. Submission of Assessments

~~**A.** Prior to June 30 of each year, the Board shall notify all institutions required to pay assessed fees of the fee amount, the submission deadline, and the penalties for failure to pay the fee. The notice shall be sent by certified mail in a sealed envelope with postage prepaid and addressed to the institution's latest address of record in the Board's office.~~

~~**B.** The assessed fee shall be submitted to the Board no later than 60 days following June 30 of the year.~~

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- ~~C.~~ For institutions ~~is seeking regular or provisional license renewal during the fiscal year then ended the assessed fees shall be based on the number of newly enrolled students for the 12 month period identified on the license renewal application.~~
- ~~D.~~ For institutions newly licensed during the fiscal year then ended, the assessed fees shall be based on the number of newly enrolled students enrolled during that fiscal year.
- ~~E.~~ If on June 30 of any year the fund balance exceeds \$300,000, only persons or institutions that have been issued an original regular license, a conditional license, or a provisional license shall pay the assessed fees for that fiscal year. Fees shall be assessed pursuant to R4-39-601(B) or (C).
- ~~F.~~ If the Board determines that there is cause to question the amount of the fee or the manner in which the fee payment was made, the Board may set the matter on the agenda for a public meeting. The Board may require additional information and material and the personal appearance of representatives of the institution before the Board.
- A. Before July 30 of each year, the Board shall notify in writing an institution specified in A.R.S. § 32-3072(B) if an assessment as defined in A.R.S. § 32-3071(1) is due. The notice shall be sent by certified mail and shall contain the amount of the assessment, the date the payment of the assessment is due, and the penalty for failure to pay the assessment. As authorized by A.R.S. § 32-3072(B), the Board shall determine assessed fees as follows:
 - 1. The assessment for an institution licensed under A.R.S. Title 32, Chapter 30 seeking renewal of a regular or provisional license shall be based on the number of newly enrolled students for the 12-month period identified on the license renewal application required under R4-39-108 or R4-39-107(D).
 - 2. The assessment for a new institution licensed under A.R.S. Title 32, Chapter 30 shall be based on the number of newly enrolled students during the fiscal year ending June 30.
 - 3. The assessment for a cosmetology school as defined in A.R.S. § 32-3071(3) or a professional driver training school as defined in A.R.S. § 32-3071(10) shall be based on the number of newly enrolled students during the fiscal year ending June 30.
- B. On June 30 of each year, the Board shall determine the amount of funds in the Student Tuition Recovery Fund ("Fund"). If the Fund balance exceeds \$500,000, only a new institution that is licensed or an institution that is provisionally licensed during the fiscal year that ended on June 30 shall be assessed a fee for that fiscal year.
- C. If an institution disputes the amount of the assessment for an institution, the Board shall place the matter on the agenda for a public meeting. The Board may require that the institution whose assessment is disputed:
 - 1. Submit additional information or documents to clarify incomplete or ambiguous information or documents; and
 - 2. Have a representative present to address the Board at the public meeting.

R4-39-602. Claims

- ~~A.~~ The Board shall investigate written complaints for claims against the fund pursuant to R4-39-502. If at a public meeting the Board finds the complaint and claim to be valid, it shall determine the amount of the claim to be paid and the party to whom the claim shall be paid.
- A. The Board shall investigate a claim against the Fund and find:
 - 1. The claim is valid if:
 - a. Student educational records confirm that the claim is filed by a person injured as defined in A.R.S. § 32-3071(7); and
 - b. The claim is filed within one year after the closed institution ceases operation;
 - 2. The claim is invalid:
 - a. As specified in A.R.S. §32-3075(B);
 - b. Because a student participates in a "teach-out." As used in this subsection, "teach-out" means a student from a closed institution voluntarily transfers to another institution where the student receives all the instruction for which the student originally paid, but did not receive from the closed institution; or
 - c. Because a student from a closed institution voluntarily transfers to another institution and receives different training for an additional cost from what the student paid at the closed institution.
- B. If the Board finds a claim to be valid, the Board shall determine the amount and the party to be paid as follows:
 - 1. The claim payment shall include only the actual amount of tuition and fees paid in cash or with a student loan. The Board shall not make a claim payment for a grant, scholarship, or debt owed to another state, local, or federal governmental agency.
 - 2. A claim payment shall be made first to the student loan holder for the amount owed on the loan, and then to the student or the parent for the amount already paid on the loan or cash payments.
- ~~B.C.~~ The Board shall pay a valid claim ~~in the amount determined and to the party named~~ within 120 days of the date of the public meeting at which the claim is considered.
- ~~C.~~ A claimant against the Student Tuition Recovery Fund who is not satisfied by the Board's decision may submit a motion for hearing pursuant to A.R.S. § 32-3054 and R4-39-501.
- D. A claimant who is not satisfied with the Board's decision on a claim may file a motion for hearing as allowed under A.R.S. Title 41, Chapter 6, Article 10.

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R4-39-603. Student Record Requests

- A.** The Board shall maintain the student records of a closed institution licensed under A.R.S. Title 32, Chapter 30 for a period of 25 years. For purposes of this Section, student records has the same meaning as in A.A.C. R4-39-401.
- B.** The Board shall provide student records of a student who attended a closed institution licensed under A.R.S. Title 32, Chapter 30, if the following are submitted:
1. Name and social security number of the student;
 2. Name of the closed institution;
 3. Student name used while attending the closed institution;
 4. Identification of the student record requested;
 5. Name and address of the party to whom the student record is to be mailed;
 6. Student signature or copy of a signed student record release form authorizing a third party to obtain the student record, if applicable; and
 7. \$10 processing fee and 25 cent per page copying charge.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

PREAMBLE

- | | |
|---|--|
| <p><u>1. Sections Affected:</u></p> <p style="padding-left: 20px;">R17-5-210
R17-5-211</p> | <p><u>Rulemaking Action:</u></p> <p style="padding-left: 20px;">Amend
Amend</p> |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 28-366
- Implementing statutes: A.R.S. §§ 28-2268, 28-5201, 28-5204, and 28-5231
- 3. The effective date of the rules:**
- September 13, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 7 A.A.R. 1387, March 30, 2001
- Notice of Proposed Rulemaking: 7 A.A.R. 2368, June 15, 2001
- Notice of Recodification: 7 A.A.R. 3483, August 10, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | George R. Pavia, Department Rules Supervisor |
| Address: | Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5017 |
| Telephone: | (602) 712-8446 |
| Fax: | (602) 241-1624 |
| E-mail: | gpavia@dot.state.az.us |
- Please visit the ADOT web site to track progress of this rule and other agency rulemaking matters:
www.dot.state.az.us/about/rules.

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The agency makes no substantive change to any existing provision in this rulemaking. The changes are all updates in word choice, grammar, form, and syntax to bring the rules into compliance with current publishing style of the Governor's Regulatory Review Council and the Arizona Secretary of State.

Note: Since the initiation of rulemaking on these Sections, the agency has recodified A.A.C. Title 17. These Sections were formerly designated R17-4-438 and R17-4-439.

7. A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

R17-5-210: The economic impact of an entire Section of definitions is minimal cost reduction to the agency in employee time to explain or clarify for an inquiring party. Members of the regulated public save minimally in time and potential misunderstanding.

R17-5-211: Arizona DPS would send one officer to perform an out-of-state audit. The billable cost to the out-of-state entity for an out-of-state audit would be the DPS officer transportation cost and per diem. Depending upon the location of an out-of-state audit, total billable costs to the entity could be minimal to moderate. Arizona DPS has only performed one out-of-state audit in the time this Section has been in effect. In-state audit costs are absorbed by the Motor Carrier Safety Assistance Program (MCSAP) federal funds, ca. \$1.3 million annually. DPS estimates they perform approximately 20 in-state audits per year. An audited entity could be sanctioned with noncompliance fines as follows:

R17-5-202 through R17-5-208: Motor Carrier Safety noncompliance - \$1,000-10,000

R17-5-209: Hazmat noncompliance - \$10,000-\$25,000

As prescribed under A.R.S. § 28-5235, other sanctions to a noncompliant entity or driver could include loss of commercial driver license, loss of registration, or revocation of privilege to operate in Arizona.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Upon recommendation by council staff, the agency removed an incorporation by reference inconsistent with A.R.S. § 41-1028; corrected cross-references to A.R.S. Title 28, Chapter 19 (actually Chapter 14); added a definition of "Division;" and incorporated other minor grammatical and syntactical changes to bring the rule into correct form and publishing style.

Since the publication of the Notice of Proposed Rulemaking, the agency is changing the Chapter 5 heading according to the design of the agency's general recodification of 17 A.A.C.

11. A summary of the principal comments and the agency response to them:

No comments were received in this rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

PLANNING COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

R17-5-210. Definitions

R17-5-211. Motor Carrier Safety; ~~Inspections~~ Inspection, Enforcement, ~~Sanctions~~ Sanction

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ARTICLE 2. MOTOR CARRIERS

R17-5-210. Definitions

- A. The following words and phrases, when used in R17-4-439 and R17-4-440, shall have the meanings ascribed to them as set forth below:

The following definitions apply to R17-5-211 and R17-5-212:

1. "Audit" means any inspection of ~~the a transporter's~~ a transporter's motor ~~vehicles~~ vehicle, equipment, books, or records ~~of a transporter~~ to determine compliance with:
 - a. R17-5-202 through ~~R17-5-208~~ and R17-5-209; and
 - b. A.R.S. Title 28, Chapter ~~19~~ 14.
 2. "Danger to the public safety" means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.
 3. "Director" means the ~~Assistant~~ Division Director, Arizona Department of Transportation, Motor Vehicle Division or the director's designee.
 4. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation and persons authorized by the Division.
 - ~~4.5.~~ "Hearing Office" means the Arizona Department of Transportation, Motor Vehicle Division, Executive Hearing Office.
 - ~~5.6.~~ "Transporter" means any person, driver, motor carrier, motor vehicle, shipper, manufacturer, including any motor vehicle transporting hazardous ~~materials~~ material, a hazardous ~~substances~~ substance, or hazardous waste, ~~which is~~ subject to:
 - a. R17-5-202 through ~~R17-5-208~~ and R17-5-209; and
 - b. A.R.S. Title 28, Chapter ~~19~~ 14.
 - ~~6.7.~~ "Violation" means any conduct, act, or failure to act required or prohibited ~~by~~ under:
 - a. R17-5-202 through ~~R17-5-208~~ and R17-5-209; and
 - b. A.R.S. Title 28, Chapter ~~19~~ 14.
- B. ~~The definitions set forth in A.R.S. § 28-2401 are specifically applicable to R17-4-439 and R17-4-440.~~
Any definition prescribed under A.R.S. § 28-5201 also applies to R17-5-211 and R17-5-212.

R17-5-211. Motor Carrier Safety: ~~Inspections~~ Inspection, Enforcement, ~~Sanctions~~ Sanction

- A. Scope. This ~~rule~~ Section applies to any transporter subject to:
1. R17-5-202 through ~~R17-5-208~~ and R17-5-209; and
 2. A.R.S. Title 28, Chapter ~~19~~ 14.
- B. Audits.
- ~~1. An~~ The Division may conduct an audit ~~may be conducted~~ for cause or without cause.
 - ~~2. Persons authorized by the Department of Public Safety or the Motor Vehicle Division~~ The Division may enter the premises of any transporter ~~in this state~~ for the purpose of conducting an audit.
 - ~~3. A~~ The Division may inspect a motor vehicle ~~may be inspected;~~
 - a. Within Arizona at:
 - ~~i. at the A~~ at the transporter's place of business; or
 - ~~ii. any Any other in-state location; within this state, or~~
 - b. Outside Arizona ~~at the a~~ transporter's place of business ~~if outside the state.~~
 - ~~4. Records shall be made available for audit during normal business hours at the transporter's place of business in Arizona. If the records are maintained at a location outside the state of Arizona, the transporter shall either make the records available at a location within Arizona designated by the Director or make the records available at the transporter's place of business outside the state of Arizona. Audits conducted at a location out of state shall be at the transporter's expense. Audit expenses, including per diem and travel expenses, are to be prepaid according to Arizona Department of Transportation, Administrative Procedures, Chapter 6.02 Travel Authorization Procedure dated January 28, 1991, which is incorporated into and made a part of this rule by reference and is on file at the Office of the Secretary of State and also on file at the Arizona Department of Transportation, Motor Vehicle Division, Executive Hearing Office. This rule does not include any later amendments or additions of the incorporated matter.~~
A transporter shall make records available for audit:
 - a. During the transporter's normal business hours; and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business; or
 - ii. Either an Arizona location designated by the Division Director or the transporter's out-of-state place of business.
 5. The Division shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.

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- C. Notification of Violations. Within five days after completion of the audit, the transporter shall be notified of all violations in writing. This notification shall specify the date by which the violations are required to be remedied.
Violation notification. Within five days after audit completion, the Division shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D. Obligation to Correct Violations. After receipt of notification of the violations, the transporter shall be required to remedy all violations and be in compliance with R17-4-435 through R17-4-435.05 and R17-4-436 and A.R.S. Title 28, Chapter 19 by the date specified.
Obligation to remedy violations: After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
1. R17-5-202 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14
- E. Noncompliance; Failure to Remedy Violations. If it is determined that a violation was not remedied on or before the date set forth on the notice of violation, further enforcement action shall be in accordance with A.R.S. §§ 28-2405 through 28-2406.
Noncompliance; Failure to remedy violations. If the Division determines a transporter did not remedy a violation by the date specified in a violation notice, the Division shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F. Danger to the Public Safety public safety. ~~Whenever~~ If the Division Director determines that a written violation report of violations establishes the existence of probable cause that a of danger to the public safety exists, the Division Director shall issue an order by 5:00 p.m. on the next business day suspending the Arizona registration of the motor vehicle which is owned or leased by the transporter, or the a driver's Arizona driver license or nonresident driving privilege of the driver.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

R20-4-1201
R20-4-1202
R20-4-1203
R20-4-1204
R20-4-1205
R20-4-1206
R20-4-1207
R20-4-1208
R20-4-1209
R20-4-1210
R20-4-1211
R20-4-1212
R20-4-1213
R20-4-1214
R20-4-1215
R20-4-1216
R20-4-1217
R20-4-1218
R20-4-1219
R20-4-1220

Rulemaking Action

Amend
Amend
Repeal
Amend
Repeal
Repeal
Repeal
Amend
Amend
Amend
Amend
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Amend
Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123(1), 6-123(3), 6-137(E), and 6-138

3. The effective date of the rules:

September 12, 2001

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4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 1812, May 19, 2000

Notice of Proposed Rulemaking: 7 A.A.R. 2202, June 1, 2001

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John P. Hudock
Address: Department of Commerce
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

6. An explanation of the rule, including the agency's reason for initiating the rule:

These rules were originally made in February 1978 to govern practice and procedure in all proceedings before the Superintendent. The purpose of the present rulemaking is to reconcile the Department's procedural rules with A.R.S. §§ 41-1092 through 41-1092.12. Those provisions of state law were added by the legislature in Laws 1995, Ch. 251, § 14, and they have been amended several times. These new statutes also created the Office of Administrative Hearings ("OAH") and charged it to conduct most hearings in contested cases with, and administrative appeals of actions by, this Department. In turn, OAH has made its own procedural rules governing its conduct of those hearings. The OAH rules were filed with the Secretary of State and became legally effective on February 3, 1999.

The Legislature's additions (codified as Article 10 of Title 41, A.R.S.), and the OAH rules (in the Arizona Administrative Code at R2-19-101 through R2-19-122) control procedures for hearing all contested cases and administrative appeals of agency actions. The procedures contained in the new statutory law and OAH rules largely supersede the Department's current rules at R20-4-1201 through R20-4-1220.

The Banking Department remains responsible for processing notices of administrative appeal or requests for hearing sent to the Department. In addition, it regularly conducts informal settlement conferences on contested cases and administrative appeals, reviews decisions arrived at through formal adjudication of administrative appeals before OAH, and entertains motions for rehearing on decisions arrived at through formal adjudication. The revisions contained in this proceeding will control when and how the Department performs these tasks. Specifically, the purpose of each rulemaking action in this proceeding is described in the following paragraphs:

R20-4-1201

This Section establishes the scope of Article 12. This rulemaking amends the Section to modernize the writing style, to enhance its clarity and readability, to make express reference to the controlling effect of A.R.S. §§ 41-1092 through 41-1092.12 and the OAHs' procedural rules, and to precisely define the newly limited scope of the Article.

R20-4-1202

This Section contains definitions of terms used in Article 12. This rulemaking amends it for five purposes. First, some terms defined here are also defined in Arizona Revised Statutes. This Section's definitions of those terms are amended by this rulemaking to incorporate the statutory definition. Second, some terms defined here are also defined in R20-4-102. Definitions in that Section are applicable throughout Chapter 4 of the Code. For that reason, this proceeding deletes the definitions in Section R20-4-1202 because they are redundant. Third, at least one term defined in the existing text of R20-4-1202 is no longer used in A.R.S. §§ 41-1092 through 41-1092.12, or in the OAH procedural rules. For that reason, this proceeding removes that term and its definition from R20-4-1202. Fourth, this rulemaking amends several of the definitions in this Section either to insert references to OAH and its new role, or simply to modernize the writing style and enhance clarity and readability. Finally, this rulemaking removes the numbers from each definition in the Section.

R20-4-1203

This Section controls who may appear and advocate a position in a contested case or administrative appeal. It is repealed because existing subsection R20-4-1203(A) is inconsistent with A.R.S. § 41-1092.01(D). In addition, the matters contained in subsection R20-4-1203(B) are covered in A.R.S. § 41-1092.03(B). Finally, the content of subsection R20-4-1203(C) is contained in OAH's rule R2-19-120.

R20-4-1204

This Section governs filing and service of permissive or required filings in matters before the Superintendent. This rulemaking amends the Section to harmonize it with OAH rule R2-19-108 and with A.R.S. §§ 41-1092.03, and 41-1092.04.

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R20-4-1205

This Section mandates the form of filings with the Superintendent, requires that they be signed, and describes the substance of the signer's certification to the Department. This proceeding repeals Section R20-4-1205. All the substantive provisions of the repealed rule are replaced by OAH rules R2-19-108(C) and (D).

R20-4-1206

This Section governs amendments to notices of hearing, orders, and responsive pleadings. This proceeding repeals Section R20-4-1206. All the substantive provisions of the repealed rule are replaced by A.R.S. §§ 41-1092.08, and 41-1092.09, the revised versions of R20-4-1209, and R2-19-106.

R20-4-1207

This Section describes computation and enlargement of time periods described or allowed in the rules contained in this Article. The rulemaking repeals Section R20-4-1207. All the matters dealt with in the repealed rule are covered by OAH rule R2-19-107.

R20-4-1208

This Section governs the commencement of proceedings before the Superintendent. This proceeding amends Section R20-4-1208 to reconcile it with A.R.S. §§ 41-1092.03, and 41-1092.06. These amendments also remove passive constructions and streamline the writing style of the Section.

R20-4-1209

This Section controls the content and timing of an answer filed in response to a notice of hearing. In this rulemaking, the Department amends Section R20-4-1209 to reconcile it with both A.R.S. § 41-1092.07(D) and OAH rule R2-19-108 as well as to specify the rights and responsibilities of a party responding to a notice of hearing.

R20-4-1210

This Section controls the Superintendent's discretion in granting a stay of operation of any order. The Department amends Section R20-4-1210 in this proceeding in order to specify the permissible grounds of a motion to stay the operation of an order. Retention of this rule in its amended form is necessary because it grants substantive rights, and because the OAH rules do not contain authority for a stay order issued either by the Superintendent or by OAH's administrative law judge.

R20-4-1211

This Section controls intervention in proceedings before the Superintendent. In this rulemaking, the Department amends Section R20-4-1211 to specify the permissible grounds of a motion, made under OAH rule R2-19-106, requesting permission for a person to intervene in a contested case or an appeal from an agency action. Retention of this rule in its amended form is necessary because it grants substantive rights, and because the OAH rules do not contain authority for intervention by any person either by the Superintendent's order or by that of OAH's administrative law judge.

R20-4-1212

This Section governs consolidation of matters before the Superintendent. This proceeding repeals Section R20-4-1212. All the substantive provisions of the repealed rule are replaced by OAH rule R2-4-109.

R20-4-1213

This Section governs conferences. The Department repeals Section R20-4-1213 in this rulemaking because the matters dealt with in the repealed rule are covered in A.R.S. § 41-1092.05(F) and in OAH rule R2-19-112.

R20-4-1214

This Section governs the granting of continuances of hearings. This proceeding repeals Section R20-4-1214. All the substantive provisions of the repealed rule are replaced by OAH rules R2-19-106(A)(2) and R2-19-110.

R20-4-1215

This Section controls depositions taken in proceedings before the Superintendent. The Department repeals Section R20-4-1215 in this rulemaking. A.R.S. § 41-1092.07(F)(4) replaces all the substantive provisions of the repealed rule.

R20-4-1216

This Section governs the issuance of subpoenas by the Superintendent. This proceeding repeals Section R20-4-1216. All the substantive provisions of the repealed rule are replaced by OAH rule R2-19-113, and A.R.S. § 41-1092.07(C).

R20-4-1217

This Section controls the appointment of hearing officers. The Department repeals Section R20-4-1217 in this rulemaking because all its substantive provisions are covered in OAH rule R2-19-104, and A.R.S. §§ 41-1092.01(H)(1), 41-1092.07(A), and 41-1092.08.

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R20-4-1218

This Section sets standards for the content of a decision issued by the Superintendent. This proceeding repeals Section R20-4-1218. All the substantive provisions of the repealed rule are replaced by A.R.S. § 41-1092.08.

R20-4-1219

This Section controls rehearing of matters decided by the Superintendent. In this rulemaking, the Department amends Section R20-4-1219 to reconcile it with A.R.S. § 41-1092.09.

R20-4-1220

This Section limits the circumstances in which the Department will permit resolution of a matter by consent agreement. This proceeding amends Section R20-4-1220 to modernize the writing style, remove mere statements of policy and passive constructions, and enhance clarity and readability.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

The Department did not rely on any study as an evaluator or justification for the rule.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

A. The Banking Department

The Banking Department expects to realize at least one specific economic benefit from this rulemaking. Many of the existing rules have no legal or practical effect since the creation of the Office of Administrative Hearings. Those rules will be repealed in this proceeding. The Department will save money by not having to review and revise the repealed rules.

Beyond that specific point, this rulemaking confers due process rights on contested case parties and appellants. The overall economic effect of codifying these procedures, rights, and remedies is positive.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking including a review by GRRC Staff and the cost of publication by the Secretary of State.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Also, these revisions should not increase any licensee's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The Department expects no measurable effect on private and public employment

F. State Revenues

This rulemaking will not change state revenues.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The text of Section R20-4-1219 in this Notice of Final Rulemaking contains one additional subsection. At the suggestion of the Attorney General's Office, subsection (E) of the proposed rule has been divided into subsections (E) and (F). Each of the remaining subsections has, as a result, been renumbered.

The Department divided the proposed subsection (E) because the first two sentences of that subsection dealt with two different situations that, logically, make more sense if they are dealt with in separate subsections. The Department regards the change as a matter of organization rather than substance. At the suggestion of GRRC staff, the Department made other grammatical and organizational changes.

11. A summary of the principal comments and the agency response to them:

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. However, no comments were received and no arguments against adoption have been raised.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

Section

- R20-4-1201. Scope of Article
- R20-4-1202. Definitions
- R20-4-1203. ~~Appearance and Practice before the Superintendent~~ Repealed
- R20-4-1204. Filing; Service
- R20-4-1205. ~~Form of All Filings; Signature~~ Repealed
- R20-4-1206. ~~Amendments~~ Repealed
- R20-4-1207. ~~Time Computation; Enlargement~~ Repealed
- R20-4-1208. Commencement of Proceedings; Notice of Hearing
- R20-4-1209. Answer to Notice of Hearing
- R20-4-1210. Stays
- R20-4-1211. Intervention
- R20-4-1212. ~~Consolidation~~ Repealed
- R20-4-1213. ~~Conferences~~ Repealed
- R20-4-1214. ~~Continuance of hearings~~ Repealed
- R20-4-1215. ~~Depositions~~ Repealed
- R20-4-1216. ~~Subpoenas~~ Repealed
- R20-4-1217. ~~Hearing Officers~~ Repealed
- R20-4-1218. ~~Decisions~~ Repealed
- R20-4-1219. Rehearing
- R20-4-1220. Consent Agreements

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE SUPERINTENDENT

R20-4-1201. Scope of Article

~~These rules of practice and procedure govern the procedure in all proceedings in which the legal rights, duties or privileges of a party are required by law to be determined by the Superintendent after a hearing or an opportunity for hearing. These rules shall be construed to secure the just, speedy and inexpensive determination of every such proceeding. In connection with any particular matter, reference should also be made to special procedural requirements prescribed by statute or other rules of the Superintendent, which special requirements, if applicable, shall govern. These rules do not apply to rulemaking or investigative proceedings before the Superintendent.~~

This Article governs procedures in all contested cases and appealable agency actions, including administrative appeals, filed with the Department. The Department shall use the authority of A.R.S. §§ 41-1092 through 41-1092.12, and the Office of Administrative Hearings' procedural rules to govern the initiation and conduct of proceedings. In a case or action, special procedural requirements in soytate statute or another Section in this Chapter shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. §§ 41-1092 through 41-1092.12 or the Office of Administrative Hearings' rules. This Article does not apply to rulemaking or to investigative proceedings before the Superintendent.

R20-4-1202. Definitions

In this Article, unless the context otherwise requires:

1. "Administrative law judge" has the meaning stated at A.R.S. § 41-1092(1). "Attorney General" means the duly qualified and acting Attorney General of Arizona or his duly appointed assistant.
2. "Appealable agency action" has the meaning stated at A.R.S. § 41-1092 3).
3. "Contested case" has the meaning stated at A.R.S. § 41-1001(4). means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the Superintendent after an opportunity for hearing.
3. "Department" means the Arizona State Banking Department.
4. "Hearing officer" means the person appointed by the Superintendent pursuant to R20-4-1217 to hear a contested case and make recommendations to the Superintendent.
5. "License" has the meaning stated at A.R.S. § 41-1001(10). includes the whole or part of any license, permit, certificate, approval, consent, registration, charter or similar form of permission required by law to be issued or given by the Superintendent.
6. "Party" means:
The the Department and;

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The Superintendent:

Each ~~each~~ person either named or admitted as a party, and ~~or~~:

Each person properly seeking, and entitled, as of right to be admitted as a party.

- 7. "Person" means any individual, partnership, corporation, association, or public or private organization.
- 8. "Superintendent" has the meaning stated in A.R.S. § 6-101(16) ~~means the Superintendent of Banks or the Assistant Superintendent of Banks.~~

R20-4-1203. Appearance and Practice before the Superintendent Repealed

- ~~A.~~ Any person may appear in his own behalf or by counsel, except that a corporation may only appear through legal counsel.
- ~~B.~~ When an attorney, other than the Attorney General, intends to appear before the Superintendent he shall promptly advise the Superintendent of his name, address and telephone number and the name and address of the person on whose behalf he intends to appear.
- ~~C.~~ Conduct at any hearing that, in the discretion of the Superintendent, is deemed contemptuous shall be grounds for exclusion from the hearing.

R20-4-1204. Filing; Service

- ~~A.~~ A person shall either personally deliver all AH papers permitted or required to be filed with the Superintendent shall be personally filed at the office of the Superintendent or shall mail them by first class, certified, or express mail, or send them by facsimile transmission (602-381-1225) may be mailed, pursuant to subsection (D), to the Superintendent at 2910 N. 44th Street, Suite 310, 1601 West Jefferson, Room 101, Phoenix, AZ 85018-7270, 85007 or shall serve them by any method permitted under R2-19-108. The Department considers papers filed when actually received at the Superintendent's address stated in this subsection. No paper shall be deemed filed until actually received by the Superintendent.
- ~~B.~~ Unless otherwise provided by these rules, copies of all papers filed, shall, at or before the time of filing, be served on the hearing officer, if any, the Attorney General, and all parties to the proceeding.
- ~~B.C.~~ A party in a contested case or appeal from an agency action shall make any required or permitted service in the manner permitted under R2-19-108. A party shall make service upon each represented party's attorney unless the administrative law judge orders separate service on the actual party. A party shall make service upon each unrepresentative party by service on the actual party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the Superintendent.
- ~~D.~~ Service upon the attorney, or upon a party, shall be made personally in accordance with Rule 5(e) of the Arizona Rules of Civil Procedure, or by mail by enclosing a copy thereof in a sealed envelope and depositing same, postage prepaid, in the United States mail, addressed to the party to be served or his attorney at the address shown by the records of the Superintendent. Service by mail is complete upon mailing.
- ~~E.~~ All notices of hearings and final decisions issued by the Superintendent shall be, when mailed, mailed by certified mail.
- ~~F.~~ Proof of service shall be made by filing with the Superintendent a written certification or other statement that service was made or by oral testimony of the person making such service.

R20-4-1205. Form of all Filings; Signature Repealed

- ~~A.~~ All papers filed with the Superintendent shall be typewritten on 8 1/2 x 11—14 inch paper.
- ~~B.~~ Every paper filed with the Superintendent under these rules shall be signed by the party filing it or by at least one attorney, in his individual name, who represents the party. The signature constitutes a certificate by the signer that he has read the paper, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

R20-4-1206. Amendments Repealed

~~Except where otherwise provided by law or these rules, the Superintendent may amend any notice of hearing or prior order issued by the Superintendent or permit the amendment of any answer where justice requires such amendment.~~

R20-4-1207. Time Computation; Enlargement Repealed

- ~~A.~~ In computing any period of time prescribed or allowed by these rules, by order of the Superintendent, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- ~~B.~~ When by these rules or by a notice given thereunder or by order of the Superintendent, an act is required or allowed to be done at or within a specified time, the Superintendent for cause shown may at any time in his discretion
 - ~~1.~~ With or without a motion or notice, order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order, or

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2. Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but the Superintendent shall not extend the time for taking any action under R20-4-1208, subsection (B), or R20-4-1219, subsections (A) or (E).
- C. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, five days shall be added to the prescribed period.

R20-4-1208. Commencement of Proceedings; Notice of Hearing

- A. A person may obtain a hearing under A.R.S. § 41-1092.03 (B) on any appealable agency action or contested case, including the following, unless otherwise provided by law. Unless otherwise provided by law, any person aggrieved by any of the following actions or orders made or issued by the Superintendent without prior hearing or opportunity for hearing may file with the Superintendent a request for hearing seeking review by the Superintendent of such action or order:
 1. A letter or order granting or denying a license;
 2. A license issued with restrictions or conditions;
 3. A cease and desist order, ~~other than one issued under A.R.S. § 6-361;~~
 4. An order to remedy unsafe or unsound conditions;
 5. An order to remedy an impairment of capital;
 6. An order taking possession and control of a financial institution or enterprise;
 7. An order assessing a fine;
 8. Any other order or matter reviewable in a hearing either under the authority of these rules, a statute or an administrative rule enforced by the Superintendent, for which a hearing to review such order is specifically provided for under the rules of the Superintendent, by statute, or by the order's express terms of the order.
- B. Unless otherwise provided by statute or these rules, a request for hearing filed under this rule must be filed with the Superintendent within 15 days of service of the letter or order to be reviewed and shall identify with specificity the action or order for which review is sought. If the party seeking review is represented by counsel, the information required by R20-4-1203, subsection (B), shall be included in the request for hearing.
- C. In proceedings in which the Superintendent is considering the suspension or revocation of a license or in which other legal rights, duties or privileges of a party are required by law to be determined by the Superintendent after a hearing or opportunity for hearing, or upon the filing of a request for hearing under subsection (A), the Superintendent shall issue a notice of hearing scheduling the matter for hearing in accordance with these rules.

R20-4-1209. Answer to Notice of Hearing

- A. The Superintendent may, in a notice of hearing, direct one or more parties to file an answer to the assertions in the notice of hearing. Any party to the proceeding may file an answer without being directed to do so. In any notice of hearing issued by the Superintendent, the Superintendent may direct that one or more parties shall file an answer to the assertions contained in the notice of hearing. Even though not directed to do so, any party may file such an answer.
- B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Superintendent may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice. Except where a different period is provided by the notice of hearing, a party directed to file an answer shall do so within 20 days after issuance of the notice of hearing. Where amendments to the assertions contained in the notice of hearing are made subsequent to service of the notice of hearing, one or more of the parties may be required to answer within a reasonable time the amended assertions.
- C. Unless otherwise directed by the Superintendent, An answer filed under this Section rule shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions contained in the notice of hearing. An If the answering party that does not have is without, or cannot is unable easily to reasonably obtain, knowledge or information sufficient to admit or deny form a belief as to the truth of an assertion shall state that inability in its answer. That statement, he shall so state, which shall have the effect of a denial. A party admits each assertion that it does not deny. Any assertion not denied shall be deemed to be admitted. An When an answering party that intends in good faith to deny only a part or a qualification of an assertion, or to qualify an assertion, he shall expressly admit as specify so much of that assertion it as is true and shall deny only the remainder.
- D. A If a party that fails to file an answer required by this Section rule within the time allowed provided, such person shall be deemed is in default. The Superintendent may resolve the proceeding against a defaulting party. In doing so, the Superintendent may regard any assertions in the notice of hearing as admitted by the defaulting party, and the proceeding may be determined against him by the Superintendent and one or more of the assertions contained in the notice of hearing may be deemed to be admitted.
- E. An answering party waives all Any defenses not raised in its the answer shall be deemed to be waived.

R20-4-1210. Stays

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Superintendent stay an action or any part of an order that will become effective before the Department can hold a hearing. The Superintendent may, in the Superintendent's discretion, stay the legal effectiveness of any action or

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order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that: ~~Where an order by its terms or by statute or by these rules will become effective before a hearing can be held, any aggrieved person who has filed a timely request for hearing under this rule or a response under A.R.S. § 6-361 may request in writing that the Superintendent stay part or all of such order until the matter has been heard and a final decision issued. The Superintendent may in his discretion grant such a stay where the applicant has adequately demonstrated that~~

- ~~1. The person applicant has a reasonable defense that which might prevail result in his prevailing on the merits at the hearing,~~
- ~~2. The person applicant will suffer irreparable injury be irreparably injured unless in the absence of the Superintendent grants the stay is granted,~~
- ~~3. The stay would not substantially or irreparably harm other interested persons, and~~
- ~~4. The stay would not jeopardize the public interest or contravene public policy.~~

R20-4-1211. Intervention

A person may only intervene in a proceeding if the person timely applies and:

Upon timely application anyone may be permitted to intervene in a proceeding when

1. A statute confers a right to intervene, or
2. The person's applicant's claim or defense shares and the main proceeding have a question of law or fact in common with the main proceeding.

R20-4-1212. Consolidation Repealed

~~Proceedings involving a common question of law or fact may be consolidated for hearing of any or all of the matters in issue where such consolidation may tend to avoid unnecessary costs or delay.~~

R20-4-1213. Conferences Repealed

~~The Superintendent, on application of a party, or on his own motion, may call a conference with the parties at any time for the purpose of clarifying the procedural steps to be followed in a proceeding, or clarifying or limiting the legal or factual issues involved in a proceeding.~~

R20-4-1214. Continuance of hearings Repealed

~~The Superintendent, on his own motion, or upon motion of a party and for good cause shown, may continue or reschedule any hearing before the Superintendent.~~

R20-4-1215. Depositions Repealed

~~**A.** Any party desiring to take a deposition shall file a written motion, setting forth the reasons why such deposition should be taken, the name and address of the witness, the matters concerning which it is expected to question the witness, the documents, if any, sought to be produced and the time and place proposed for taking of the deposition. If it appears that the prospective witness may be unable to attend or may be prevented from attending a hearing, or may have relevant information or information that appears reasonably calculated to lead to the discovery of admissible evidence, and that it is necessary to take his deposition in the interest of justice, the Superintendent may in his discretion issue an order permitting the deposition to be taken. The Superintendent's order shall identify the witness to be deposed, state the scope of the testimony to be taken and the documents, if any, to be produced, and specify the time when, the place where, and the designated officer before whom the witness is to testify or produce documents. Such order shall be served on all parties and the Attorney General a reasonable time in advance of the time fixed for taking the deposition.~~

~~**B.** Depositions taken under this rule shall be conducted and may be used as provided in the Arizona Rules of Civil Procedure.~~

R20-4-1216. Subpoenas Repealed

~~**A.** Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing or deposition shall file a written ex parte application therefor setting forth the name and address of the witness, the matters concerning which it is expected to question the witness, the documents sought to be produced, and the time and place of the hearing or deposition. A copy of the application for a subpoena shall, at or before the time of filing, be served on the hearing officer. If it appears that the prospective witness' testimony or the documents requested is relevant, or in the case of a deposition, appears reasonably calculated to lead to the discovery of admissible evidence, the Superintendent shall issue the subpoena. Where a party desires a subpoena to compel the attendance of a witness or the production of documents at a deposition he shall combine his request for the subpoena with his request for a deposition under R20-4-1215.~~

~~**B.** Subpoenas shall be served as in civil actions. Subpoenas issued at the request of the Superintendent may be served by an employee of the Department or any attorney or agent of the Attorney General's Office.~~

~~**C.** Subpoenas may be amended at any time and the amended subpoena may be served as provided in subsection (B).~~

R20-4-1217. Hearing Officers Repealed

~~**A.** The Superintendent may appoint a hearing officer to hear any contested case before him. A hearing officer appointed by the Superintendent may make all determinations and enter all orders and process which the Superintendent is authorized~~

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to make or issue under these rules or any other order necessary for the orderly conduct of the hearing except orders granting a stay, orders on motions for rehearing, final decisions under R20-4-1218 or other orders or process that the hearing officer is specifically prohibited from entering by these rules or by order of the Superintendent.

- B.** Any party in a proceeding before the Superintendent may file an affidavit for change of hearing officer alleging any of the grounds set forth in A.R.S. § 12-409. An affidavit for change of hearing officer shall be filed within ten days after discovery that grounds exist for a change of hearing officer and in no event later than ten days before the date set for hearing. Copies of an affidavit filed under this subsection shall be served as provided in R20-4-1204 and upon receipt of a copy thereof the hearing officer shall take no further action until the affidavit has been acted on by the Superintendent, except that the hearing officer may make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the proceeding may be transferred to another hearing officer.
- C.** Within 30 days after the conclusion of the proceeding, the hearing officer shall submit to the Superintendent written recommendations which shall include proposed findings of fact, conclusions of law and order. Before submitting his recommendations to the Superintendent the hearing officer may submit a draft thereof to the Attorney General and the parties for the purpose of receiving their comments and suggestions.
- D.** The hearing officer's recommendations may be approved or modified by the Superintendent. The Superintendent's decision approving or modifying the hearing officer's recommendations shall be the final decision of the Superintendent, subject to the filing of a motion for rehearing under R20-4-1219.

R20-4-1218. Decisions Repealed

The final decision in a contested case before the Superintendent shall be signed by the Superintendent and shall state separately the findings of fact, conclusions of law and order of the Superintendent. The decision may incorporate by reference, with or without modifications, the recommendations of the hearing officer.

R20-4-1219. Rehearing

- A.** Except as provided in subsection (H) ~~(G)~~, any party in a contested case ~~before the Superintendent~~ who is aggrieved by a decision rendered in that such case may file with the Superintendent, within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09 ~~not later than ten (10) days after service of the decision~~, a written motion for rehearing or review of the decision specifying the particular reason for rehearing ~~grounds therefor~~.
- B.** A party requesting rehearing under this Section may amend a motion for rehearing under this rule may be amended at any time before the Superintendent rules on the motion ~~it is ruled upon by the Superintendent~~. Any other party, or the Attorney General, may file a response to the motion for rehearing may be filed within 15 ten (10) days after service of the such motion for rehearing, or the amended motion for rehearing by any other party or the Attorney General. The Superintendent may require a written brief of the filing of written briefs upon the issues raised in the motion and may allow provide ~~for~~ oral argument.
- C.** The Superintendent may grant a motion for a rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the proceedings before the Superintendent, in or any order, or any abuse of discretion that deprives, ~~whereby the moving party was deprived of a fair hearing~~;
 2. Misconduct of the Superintendent, the Superintendent his employees, or the administrative law judge his hearing officer, or the prevailing party;
 3. Accident or surprise that which could not have been prevented by ordinary care ~~prudence~~;
 4. Newly discovered material evidence that which could not reasonably ~~with reasonable diligence~~ have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in admitting the admission or rejecting rejection of evidence or other legal errors ~~of law~~ occurring at the hearing;
 7. The That the decision is not justified by the evidence or is contrary to law.
- D.** The Superintendent may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any ~~of the reason~~ reasons listed set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or reason grounds for granting on which the rehearing is ~~granted~~, and the rehearing shall cover only those matters ~~so~~ specified.
- E.** The Superintendent, within the time for filing a motion for rehearing ~~under this rule~~, may without a motion on his own initiative order a rehearing or review of a his decision for any reason that would allow the granting of a motion for which he might have granted a rehearing by on motion of a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.
- F.** After giving the parties notice and an opportunity to be heard on the matter, the Superintendent may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing. In either case, the order granting such a rehearing shall specify the ground therefor.

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~~F.G.~~ When a motion for rehearing is based ~~on upon an affidavit affidavits~~, ~~the moving party they~~ shall ~~serve the affidavit be~~ served with the motion. An opposing party or the Attorney General may ~~within ten days after such service~~ serve opposing affidavits within 10 days after service of the motion for rehearing.

~~G.H.~~ The Superintendent may issue a final decision, subject only to judicial review, and without an opportunity for rehearing or administrative review if the Superintendent includes in the decision:

1. An express finding that the decision needs to be made immediately effective to preserve the public peace, health, and safety; and
2. An express finding that a rehearing or review is:
 - a. Impossible,
 - b. Unnecessary, or
 - c. Contrary to the public interest.

~~If in a particular decision the Superintendent makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Superintendent's final decision.~~

R20-4-1220. Consent Agreements

- A. ~~The Department will enter into a consent agreement, either in litigation or in an administrative proceeding, only if the defendant or respondent admits to the allegations in the complaint, notice, or order relating to the jurisdiction of the Superintendent or the jurisdiction of the tribunal that will enter the judgment or order. The Superintendent has determined that in any civil lawsuit brought by him or in any matter pending before the Superintendent or the Hearing Board, it is important to avoid creating, or permitting to be created, an impression that a decree or order is being imposed when the conduct alleged did not in fact occur. Accordingly, it is the Superintendent's policy that he will not permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint, notice of hearing or order.~~
- B. A refusal to admit allegations is a denial. However, a defendant or respondent may consent to a judgment or order reciting that it does not admit or deny the allegations except those required by subsection (A). A consent agreement shall contain those additional provisions required by the Superintendent in a given matter, and may include:
1. Waiving any right to seek judicial review challenging the judgment's or order's validity.
 2. Waiving findings of fact and conclusions of law.
 3. Stating that the agreement is signed only to settle the matter and not as an admission that the defendant or respondent has violated the law.

~~For purposes of this rule a refusal to admit the allegations is equivalent to a denial except that a defendant or respondent may consent to a judgment or order where he states in the consent agreement that he neither admits nor denies the allegations, other than those relating to the jurisdiction of the tribunal that is to enter the judgment or order. The consent agreement shall contain such additional provisions as the Superintendent deems appropriate including provisions waiving further procedural steps and all rights to seek judicial review or otherwise to challenge or contest the validity of the judgment or order. In addition, the agreement may contain, where appropriate, an express waiver of findings of fact and conclusions of law and a statement that the signing thereof is for settlement purposes only and does not constitute an admission by the defendant or respondent that the law has been violated.~~

- C. The Superintendent has sole discretion to decide whether to resolve a matter by consent agreement. Nothing in this Section gives the Superintendent a duty to approve a consent agreement in any matter.
- ~~The approval of any consent agreement by the Superintendent is entirely within his discretion and nothing in this rule shall be construed to require the Superintendent to approve a particular consent agreement.~~